

Pat Lundvall (NVSBN 3761)
McDonald Carano LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
Tel: (702) 873-4100
plundvall@mcdonaldcarano.com

James V. Masella, III (pending admission *pro hac vice*)
Jesse A. Townsend (pending admission *pro hac vice*)
PATTERSON BELKNAP WEBB & TYLER LLP
1133 Avenue of the Americas
New York, NY 10036-6710
Tel: (212) 336-2000
jmasella@pbwt.com
jtownsend@pbwt.com

Attorneys for Defendants Robert Lee, Steve Roberts, Edward Yew, Brian Morales, and Jon Tondeur and Nominal Defendant Zoompass Holdings, Inc.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

AIRICK JOHNSON, Derivatively on behalf of
Nominal Defendant, ZOOMPASS HOLDINGS
INC.,

Plaintiff,

Case No. 2:17-cv-02949-JAD-CWH

ROBERT LEE, STEVE ROBERTS, EDWARD
YEW, BRIAN MORALES, AND JON
TONDEUR.

Defendants.

ECF No. 6

ZOOMPASS HOLDINGS, INC.

Nominal
Defendant.

STIPULATION AND ORDER STAYING PROCEEDINGS

WHEREAS Plaintiff Airick Johnson filed his Complaint on July 26, 2017 in which he alleged, among other things, breaches of fiduciary duty, corporate waste, gross mismanagement, unjust enrichment, and waste of corporate assets derivatively on behalf of Nominal Defendant Zoompass Holdings, Inc. (the “Nominal Defendant”) against Defendants Robert Lee, Steve

1 Roberts, Edward Yew, Brian Morales, and Jon Tondeur (collectively, the “Individual
2 Defendants,” and together with the Nominal Defendant, the “Defendants”);

3 WHEREAS pending before the United States District Court for the District of New Jersey
4 is *Patel v. Zoompass Holdings, Inc.*, Case No. 2:17-cv-03831-JLL-JAD (D. NJ May 30, 2017) (the
5 “Securities Class Action”), a putative class action alleging violations of the Securities Exchange
6 Act of 1934 and regulations promulgated thereunder;

7 WHEREAS the parties to the Securities Class Action have stipulated that Defendants shall
8 answer, move, or otherwise respond to Plaintiff’s Amended Complaint on or before 60 days from
9 November 20, 2017, the filing date of the Amended Complaint;

10 WHEREAS Plaintiff’s Complaint in the above-captioned matter alleges certain misconduct
11 that is similar to the misconduct alleged in the Securities Class Action;

12 WHEREAS Plaintiff, the Individual Defendants, and the Nominal Defendant wish to
13 promote the efficient and orderly administration of justice by coordinating this derivative action
14 with the Securities Class Action;

15 WHEREAS when this matter was pending in the District Court for Clark County, Nevada,
16 Plaintiff, the Individual Defendants, and the Nominal Defendant had entered into a stipulation that
17 included Paragraphs 1-11, *infra*, and counsel for the Individual Defendants and the Nominal
18 Defendant accepted service of the Complaint on behalf of all Defendants, including the Individual
19 Defendants who had not previously been served; and

20 WHEREAS the Individual Defendants have removed this action to the United States District
21 Court for the District of Nevada, and in consideration for Plaintiff’s consent to the same, have agreed
22 to stipulate to Paragraphs 1-11, *infra*.

23 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the
24 undersigned counsel for the Plaintiff, the Individual Defendants, and the Nominal Defendant that:

- 25 (1) By authorizing their counsel to accept service on their behalf, the Individual
26 Defendants waive any and all objections to the absence of summons or of service, but
27 do not waive any other defense, objection, or ground for dismissal that they may have

1 otherwise raised in response to this action, including but not limited to any objection
2 to the Court's jurisdiction or venue of the action.

- 3 (2) All activity in the above-captioned matter shall be stayed, and the Defendants shall
4 need not answer, move, or otherwise respond to Plaintiff's Complaint, or any amended
5 complaint, during the pendency of the stay;
- 6 (3) During the pendency of the stay, should any of the Defendants produce any documents
7 to (i) any plaintiffs in the Securities Class Action, (ii) any plaintiffs in any related
8 derivative actions, or (iii) any purported shareholders who make a books and records
9 demand, Defendants will produce to Plaintiff a copy of the same documents, subject
10 to the parties entering into a confidentiality agreement and/or protective order;
- 11 (4) During the pendency of the stay, Defendants shall include Plaintiff in any mediation
12 and any formal settlement talks with the plaintiffs in the Securities Class Action and
13 shall include Plaintiff in any mediation and any formal settlement talks with any
14 plaintiff in any related derivative lawsuit;
- 15 (5) Plaintiff may lift the stay of the above-captioned matter at any time by (i) making a
16 request to the Court, and (ii) by transmitting notice to counsel for the nominal
17 defendant via e-mail at the e-mail addresses listed below;
- 18 (6) Defendants shall promptly notify Plaintiff of any related derivative lawsuits that any
19 of them become aware of;
- 20 (7) During the pendency of the stay, Plaintiff may amend the Complaint;
- 21 (8) The Individual Defendants and the Nominal Defendant shall answer, move, or
22 otherwise respond to Plaintiff's Complaint, or instead the operative amended
23 complaint, if any amended complaint has been filed, within sixty (60) days after they
24 receive a request to lift the stay, except as described in Paragraph 10, *infra*;
- 25 (9) Should any other derivative case be filed in any forum subsequent to the above-
26 captioned matter that alleges and seeks relief from the same or similar alleged
27 misconduct as that alleged in the above-captioned matter, the Individual Defendants

- 1 and the Nominal Defendants shall either agree to, or move for, a stay of said later-
2 filed action;
- 3 (10) Should a later-filed action such as is described in Paragraph 9, *supra*, not be stayed,
4 Plaintiff in the above-captioned matter may lift the stay of the above-captioned matter
5 by following the requirements of Paragraph 5, *supra*, but in such circumstance the
6 Individual Defendants and the Nominal Defendant shall answer, move, or otherwise
7 respond to Plaintiff's Complaint, or instead the operative amended complaint, if any
8 amended complaint has been filed, within twenty (20) days after they receive a request
9 to lift the stay; and
- 10 (11) Should any other derivative case be filed in any forum that alleges and seeks relief
11 from the same or similar alleged misconduct as that alleged in the above-captioned
12 matter, the Individual Defendants and the Nominal Defendant shall never move to
13 stay the above-captioned action in deference to the later-filed action.

14 Dated: December 13, 2017.

15 MCDONALD CARANO, LLP

16 **ORDER**

17 **Based on the parties'
18 stipulation [6] and good cause
19 appearing, IT IS SO ORDERED.**

20
By: /s/ Pat Lundvall
Pat Lundvall (NVSBN 3761)
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
Tel: (702) 873-4100
plundvall@mcdonaldcarano.com

21 
22 U.S. District Judge Jennifer Dorsey
23 December 14, 2017

24 James V. Masella, III (pending admission *pro hac vice*)
25 Jesse A. Townsend (pending admission *pro hac vice*)
26 PATTERTON BELKNAP WEBB & TYLER LLP
27 1133 Avenue of the Americas
28 New York, New York 10036
Tel: 212-336-2000
jmasella@pbwt.com
jtownsend@pbwt.com

27 *Attorneys for Defendants Robert Lee, Steve Roberts,
28 Edward Yew, Brian Morales, and Jon Tondeur and for
Nominal Defendant Zoompass Holdings, Inc.*

1 LEVERTY & ASSOCIATES LAW CHTD.
2 STIP TO Stay PROCEEDINGS

3 By:

5 Patrick R. Leverty, Esq.
6 Reno Gould House
7 832 Willow Street
8 Reno, Nevada 89502
9 Tel: (775) 322-6636
10 pat@levertylaw.com

11 *Liaison Counsel for Plaintiff*

12 THE BROWN LAW FIRM, P.C.
13 Timothy W. Brown, Esq.
14 240 Townsend Square
15 Oyster Bay, New York 11771
16 Tel: (516) 922-5427
17 tbrown@thebrownlawfirm.net

18 *Attorneys for Plaintiff*